IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 27TH NOVEMBER 2007 / 6TH AGRAHAYANA 1929

CRL.A.No. 2295 of 2007()

AGAINST THE JUDGEMENT/ORDER IN CRLP.240/2007 Dated 10/04/2007
ST.126/2006 of JUDL. MAGISTRATE OF FIRST CLASS, KOTTAYAM

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APPELLANT: PETITIONER/COMPLAINANT

A.V.JOSEPH,
THADATHILPARAMIL, M.L.ROAD, KOTTAYAM.

BY ADV. SRI.SURIN GEORGE IPE

RESPONDENTS: ACCUSED AND STATE

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1. P.A.PRABHU,
PANTHAYAIL HOUSE, THACHUKUNNU, PUTHUPPALLY,
KOTTAYAM.

2. STATE OF KERALA, REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.C.A.CHACKO
PUBLIC PROSECUTOR SRI.C.M.NAZAR

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 27/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl.Appeal No. 2295 of 2007

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Dated this the 27th day of November, 2007

JUDGMENT

Heard both sides.

2. The appellant herein was the complainant in S.T.No.126/2006 under Section 138 of the Negotiable Instruments Act, 1881 in respect of a cheque for Rs.1 lakh. The accused was acquitted under Section 256(1) Cr.P.C. Consequent to the failure on the part of the appellant to appear before the court below for the third time, his application for excusing his absence on the ground that he was laid up with fever was rejected by the learned Magistrate.

3. Having considered the facts and circumstances in the case, I do not find any justification for acquitting the accused under Section 256(1) Cr.P.C., merely for the absence of the complainant who had given sufficient reason for his absence. The impugned order dated 3.11.2006 passed by the Judicial First Class Magistrate Court-I Kottayam in S.T.No.126 of 2006 is accordingly set aside. S.T.No.126 of 2006 will stand restored to file and shall be disposed of in accordance with law. Both sides shall appear before the learned Magistrate without any further notice on 27.12.07.

V. RAMKUMAR, JUDGE

sj